MAY 17, 1958

THE

SOLICITORS' JOURNAL

VOLUME 102

NUMBER 20

CURRENT TOPICS

Holding Counsel's Hand

IN our issue of 22nd March last we commented briefly upon the criticisms which the MASTER OF THE ROLLS had recently made about the absence from court of solicitors engaged in a case. The Council of The Law Society have now stated their view that a solicitor who neither attends in court himself nor makes arrangements for a responsible member of his staff, or his agents, to be present throughout any court proceedings in which his firm is acting fails in his duty towards the court, his client and his profession. We suggest that for practical purposes this ruling is too wide and unqualified. In our earlier note we referred to the difficulty of being in two places at the same time. Subject to this, we agree that the ruling is just so far as cases in the superior courts are concerned, but we think that the situation ought to be different in the county courts and magistrates' courts. Naturally, everything turns on what is meant by "responsible," but we assume that the term signifies a solicitor or managing clerk. It is not always practicable for a solicitor or managing clerk to accompany counsel on every case in the lower courts. Everything depends on the nature and complexity of the case, and there are many in which partners deem it necessary to remain in court with counsel during hearings in county courts in spite of the modest fees which even Scale 4 lays down. Many, however, are the simple and straightforward cases in the county courts or before magistrates which can without detriment to anyone be entrusted to counsel accompanied only by a junior member of the solicitor's staff to run errands. Obviously, counsel must be properly briefed, but so he should be whether the solicitor is present or not. The first person to object when he is charged both for counsel and "a responsible member" of the solicitor's staff would be the client. Certainly the situation must be explained to the client, but if he is satisfied we cannot see that the solicitor is failing in his duty towards the court or the profession. While we cannot visualise circumstances in which a solicitor or managing clerk should not be present in the Court of Appeal and the High Court, we think that in the lower courts it ought to be a question of discretion and the circumstances of each individual case.

Costs of Leases

IT has for long been a matter of chagrin for tenants and of quiet satisfaction for landlords to contemplate the custom which prevails over large parts of the country whereby on the grant of a lease the tenant pays the landlord's costs as well as his own. The beauty of the custom from the landlord's

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point of view is that often the tenant does not find out about it until in practice it is too late to withdraw. For this custom we have never been able to discover any rational basis, though we suspect that its historical basis is feudal. We are therefore delighted to see that Mr. D. GRANVILLE WEST, M.P., supported by solicitor-M.P.s of all parties and by M.P.s who are not lawyers and assured of the support of the Council of The Law Society and, we imagine, of the overwhelming majority of the profession, has introduced into the House of Commons the Costs of Leases Bill. The object of the Bill is to override any customs and to provide that a party to a lease, underlease or agreement for a lease, underlease, tenancy or subtenancy shall be under no obligation to pay the whole or any part of any other party's solicitor's fees, charges, disbursements (including stamp duty), expenses or remuneration. It will be possible, however, to contract out of the Act when it is passed, but only by the parties agreeing in writing. We trust that we shall not sound too grasping if we suggest that if and when our present financial troubles pass it would be useful to revise the fantastic scale of fees which solicitors are entitled to charge tenants.

Life Policies and Estate Duty: A Concession

IN commenting on the Budget we expressed surprise (p. 276, *ante*) that no mention was made of legislation to right the injustice revealed in *Re Hodge's Policy* [1957] 3 W.L.R. 958, in spite of an earlier Government promise to rectify the situation. The reason was given by Mr. J. E. S. SIMON on the Second Reading of the Finance Bill: the Government are reviewing the whole question of the treatment for estate duty purposes of life assurance policies. Final proposals are not ready for this year's Finance Bill, and in the meantime an extra-statutory concession will operate pending legislation on a wider basis next year. The concession as stated by the Financial Secretary to the Treasury is in the following terms: "Where a beneficiary is absolutely and indefeasibly entitled to a policy of assurance for a sum of money payable on the death of another person, no duty will be charged thereon on the death of that person, provided that the beneficiary became so entitled more than five years before the death and the life assured neither retained any benefit for himself nor paid any premiums within the five years. Where the other conditions are satisfied, but the life assured paid some premiums in the five years before his death, the claim to duty will be limited to the proportion of the policy moneys corresponding to the ratio between the premiums paid by the life assured during the five-year period and the total premiums. That concession will apply in respect of deaths after Budget Day, 15th April, 1958."

Animals on the Highway

THE case of *Annells* v. *Warneford* (*The Times*, 7th May), concerning a pony which ran out of a lane and collided with a motor car, reminds us that as long ago as 1953 a Committee reported on the subject of liability for damage caused by animals but that so far nothing has been done about it (Cmd. 8746, H.M.S.O., 6d.; and see our issue of 15th October, 1955, p. 702). Mr. ANNELLS, the plaintiff in the action reported last week, was driving his car in a perfectly normal and careful manner along a main road when the pony ran out. Likewise, it was not established that the two girls who were trying to catch the pony when it escaped were negligent. While we agree with the MASTER OF THE ROLLS in sympathising strongly with the plaintiff, we doubt whether this is one of the points which require amendment. Unless a pony is to be a *Rylands* v. *Fletcher* object, it is difficult to see what amendment of the law would have enabled the plaintiff to succeed. It is true, as the late Lord Maugham said in *Searle* v. *Wallbank* [1947] A.C. 341, that the law relating to animals on the highway originated when traffic conditions were very different from those to-day, but it is one thing to suggest changing the liability of the owners of dogs which habitually wander over the roads and quite another to make the owner of a pony liable for a single unforeseeable dash for freedom. Even so, it might be a good idea to blow the dust off the Committee's report.

More Revolt on the Back Benches

THE Government will find it difficult to resist the demand of 130 of their supporters for the revision of the basis of compensation on compulsory acquisitions. Within recent months Ministers have bowed to storms emanating from their rear on the subject of the Rent Act and dividend stripping and there is no reason why they should seek to perpetuate the present anomalous and unfair state of the law. The Town and Country Planning Act, 1947, made a brave effort to secure for the nation increases in land values. That effort having been abandoned, there is no satisfactory compromise short of full market value and it would be a good thing for everyone if the Government abandoned the attempt to preserve an artificial value for the purposes of compensation.

Breach of Promise

SECTION 2 of the Infants' Relief Act, 1874, provides that a promise made by an infant which would not otherwise be binding upon him cannot be ratified after he has reached full age. Occasionally, however, it is difficult to distinguish those cases where an infant has purported to ratify an earlier agreement from those where he has in fact made a new promise supported by fresh consideration which, with the exception of a promise to pay a debt contracted during infancy (s. 2), will render him liable for its breach. This problem has arisen in relation to breach of promise of marriage and recently confronted SALMON, J., in a case which was heard at Leeds Assizes. There can be no doubt that an infant is not bound by a promise of marriage made during infancy, but what are the all-important factors in deciding whether he has merely ratified it after attaining his majority, or made a fresh and independent promise? In *Coxhead* v. *Mullis* (1878), 3 C.P.D. 439, an infant promised to marry the plaintiff and, although he wrote affectionate letters to her and they visited each other and walked out together after his coming of age, he was not bound by his earlier promise, but in *Ditcham* v. *Worrall* (1880), 5 C.P.D. 410, the court reached the opposite conclusion because the infant defendant had created a new contract after his twenty-first birthday by asking his fiancée to fix the date of the wedding. To be liable in damages, there must be evidence of a promise of marriage made after the infant has attained his majority, and not merely ratification by conduct of a promise made before he was twenty-one.

ESTATE DUTY: COPING WITH SECTION 55—II

MITIGATING ESTATE DUTY WHERE SECTION 55 APPLIES

Introduction

IT is not unknown for a quoted share to stand at a price which is higher than the tangible assets of the company would warrant, the investing public having taken an optimistic view of the goodwill or of the possibilities of growth. In such a case, the normal estate duty valuation under s. 7 (5) of the Finance Act, 1894, might actually exceed a scientific valuation on the assets basis under s. 55 of the 1940 Act. For shares in a private company this would be very unusual, however. For the purposes of this article it is assumed that the s. 55 valuation will usually be higher, and certainly never lower, than the s. 7 (5) valuation. The principal means examined here of mitigating estate duty where s. 55 applies will be those made possible by the Finance Act, 1954, viz.: (*a*) the adjustment of the valuation by reference to the proceeds of a subsequent arm's length sale of the shares, and (*b*) the 45 per cent. reduction in rate of duty in favour of agricultural property and industrial hereditaments, plant and machinery owned by the company. There is no ceiling to either of these reliefs, so it is possible for the duty paid on the shares to be actually less than if they had been valued in the first place on the normal s. 7 (5) basis. This fact should always be borne in mind if steps are in contemplation which might exclude s. 55. This is particularly so where most of the shares in question are preference shares or other shares whose s. 55 value is not greatly above the ordinary market value. A "right" to s. 55 valuation can easily be retained or created, e.g., by giving voting control to a small number of ordinary shares retained by the person whose death is in contemplation. This control may be confined to certain specific matters only, if desired.

Sale within three years

Where the shares or debentures which have been valued under s. 55 are sold within three years after the death then, subject to certain conditions, the sale proceeds can be substituted for the s. 55 value, those proceeds being adjusted by reference to the changed circumstances at the time of sale (Finance Act, 1954, s. 30 (1)). This may bring in turn a reduction in the rate of duty on the whole estate. A remarkable aspect of the relief is that it preserves any reduction in the rate of duty applicable to industrial hereditaments, plant, machinery and agricultural land (*ibid.*, s. 31 (4)).

The seller must be the person accountable for the duty payable on the death of the persons to whom the shares passed on the death. Moreover, the Inland Revenue have to be satisfied on three further matters:—

(*a*) Neither the vendor nor the persons interested in the proceeds were relatives of the purchaser or of a person "having an interest in the purchase";

(*b*) The sale was made at arm's length for a price freely negotiated at the time of sale;

(*c*) The price (after adjustment needed to take account of any difference in circumstances at the date of sale and the date of death) was *less* than the s. 55 valuation.

"Relative" is defined by s. 31 (1) (*d*) as husband, wife, ancestor, lineal descendant, brother or sister. Sales to, e.g., sons-in-law, nephews and cousins of the seller could still qualify for relief. It seems that a relative who was entitled to a charge on the purchase for a sum of money would not necessarily be interested in the purchase (cf. *Glen* v. *Inland Revenue Commissioners* [1926] S.C. 44). Strictly speaking a shareholder in a company has no interest in the company's assets as such, but if the sale was, e.g., to a company controlled by a relative of the vendor, the claim to relief would be resisted.

Since the price must be freely negotiated at the time of sale, a price fixed by the articles would not qualify. The additional requirement as to "arm's length" seems to be somewhat tautologous. However, para. (*a*) does not apply where the vendor himself has an interest in the purchase, nor where the purchaser has an interest in the proceeds; such a case would presumably be caught by the "arm's length" requirement.

Since the subsection can apply only where the price as adjusted is less than the s. 55 valuation, it follows that the Inland Revenue cannot invoke the section to increase the duty. Moreover, even where the actual price exceeds the valuation, the taxpayer may be able to show that this is due to changes in circumstances since the death, and thus still obtain a reduction. "Circumstances" could include almost anything which could be said to increase the value of the shares after the death.

Although on the face of it the subsection cannot apply unless the Inland Revenue are in fact "satisfied" about (*a*), (*b*) and (*c*), it seems that their refusal of relief is nevertheless subject to appeal. Compare s. 42 of the Finance Act, 1930, which provides stamp duty relief where certain facts are proved to the satisfaction of the Inland Revenue. Appeals against refusal of relief are not in practice contested on this narrow ground. In any case, s. 10 of the Finance Act, 1894, seems to give the right of appeal.

It is not necessary to sell all the shares; appropriate relief will be given where some only are sold. But by and large they must be the same shares. Substituting or consolidating them, or even making a bonus issue in right of them, is not fatal (s. 30 (5)). (The bonus issue would be treated as a sub-division.) But any alteration of their rights, and *a fortiori* their conversion into shares of a different class, before the sale, may result in refusal of the relief.

Forty-five per cent. reduction for industrial assets

One of the objects of the changes in the Finance Act, 1954, was to encourage productive industry by a 45 per cent. reduction in the rate of duty on industrial assets used in business, not only where the deceased owned them directly but where their value was reflected in a s. 55 valuation of his shares or debentures. Another object was to extend the existing 45 per cent. reduction, for agricultural values directly owned by the deceased, to agricultural property owned by the s. 55 company and occupied by it for husbandry and forestry. The relevant provisions are contained in ss. 28 and 31 (5) (*b*); it is not intended here to expound their practical application except in relation to some methods of directly turning them to account.

Two things are particularly striking about the relief. Although it is given only where the shares and debentures are valued on the s. 55 basis, there is no necessity to show that that basis has in fact produced a higher value than the normal market value basis: for preference shares and debentures and even for some ordinary shares, s. 55 may produce no higher value. Again, the relief is given for agricultural

property and industrial assets owned by a subsidiary of the s. 55 company, notwithstanding the fact that the s. 55 company's own shares in the subsidiary are valued on the ordinary basis. In a sense, therefore, relief is given for notional hardships which do not in fact exist.

Deduction for liabilities

Liabilities of the company owning the industrial assets may in certain circumstances be set off against those assets, thus *pro tanto* excluding the 45 per cent. relief. However, the provisions for such set-off are so hedged about with restrictions that in practice it is possible to obtain the full rate reduction for industrial assets for which the whole purchase price is still a liability.

In the first place no liability of the company which constitutes a " debenture " (as widely defined in s. 59 of the Finance Act, 1940) is deductible at all (Finance Act, 1954, s. 31 (5) (*a*)). The definition covers almost every capital liability other than—

(i) a temporary loan made in the ordinary course of a banking business; and

(ii) outstanding purchase money for capital assets which the vendor sold in the ordinary course of his business.

It follows that any kind of loan by the deceased to the company is a debenture and in so far as it is allocable to the industrial assets of the company it attracts the 45 per cent. relief, even though it may be so well secured as to be practically gilt-edged. If therefore the company can use industrial assets in its business (they need not be essential) and the prospective deceased's shares and " debentures " in it will qualify for s. 55 valuation, then it will pay him to lend the company the wherewithal to purchase such assets.

Example

X Limited is lessee of a factory worth £500,000, and has no liabilities of any kind.

X owns all the shares and has in addition investments worth £1 million. He lends *X* Ltd. £500,000 with which to buy the factory. The £500,000 will now attract estate duty on his death at 44 per cent. instead of 80 per cent., a saving of £180,000.

X could achieve the same result by buying the factory himself and letting it to the company (Finance Act, 1954, s. 28 (4)).

If the £500,000 had been lent to *X* Ltd. not by *X* but by, say, an insurance company, some, but not all, of the £500,000 value of the factory would be allocable to the insurance company's debenture and only the remainder to *X's* shares, so he would lose part of the 45 per cent. relief. The apportionment of the £500,000 between the shares and the debenture would be rateably to their s. 55 values, whether or not the debenture conferred a charge on the factory. It follows that where a s. 55 company has industrial assets and also liabilities which constitute " debentures " then, other things being equal, it is better for the debentures to be owned by the deceased, even if he had to borrow money to acquire them.

Coming now to those liabilities which avoid being " debentures," s. 31 (6) of the Finance Act, 1954, generously provides that in arriving at the net value of agricultural property and industrial assets such liabilities shall be deducted primarily from other assets, i.e., from assets not attracting the 45 per cent. relief. This, however, will not be of much help if the " other assets " are of little value. Moreover, in the case of " secured " liabilities the deduction has to be made primarily from the value of assets included in the security, even though they may be agricultural property or industrial assets.

It follows that companies owning these assets should avoid giving a charge on them to secure either a bank overdraft or the payment of the purchase money to the suppliers, if those suppliers supplied the assets in the ordinary course of business (see Finance Act, 1940, s. 59).

Thus, in the example given above, if *X* Ltd. had borrowed the whole £500,000 from a bank on temporary overdraft, giving a charge to the bank on the factory, the net value of the factory for the purpose of the 45 per cent. relief would be nil and accordingly no relief would be allowed.

These examples are put forward not as being typical, but to emphasise the anomalies in the Finance Act, 1954, and how they may be turned to account.

Assets vested in subsidiary company

As indicated above, where the s. 55 company has a subsidiary, its own shares in that subsidiary are not themselves valued on the s. 55 basis. Assuming that the capital structure of the subsidiary is such that the market value of its shares is well below the s. 55 value, there can be considerable estate duty advantage if the parent company vests some of its non-industrial assets in the subsidiary, taking a lease or a licence to use them.

P. E. WHITWORTH

"THE SOLICITORS' JOURNAL," 15th MAY, 1858

On the 15th May, 1858, THE SOLICITORS' JOURNAL discussed the new Divorce Court: " One unpleasant feature connected with it is, perhaps, nothing more than an inevitable incident of the first establishment of such a jurisdiction. We allude to the large number of cases in which it has pronounced judgment of dissolution of marriage. Some days back Lord Campbell announced, with much apparent satisfaction, that since the opening of the court eight such judgments had been given, and he added that, in one or two instances the parties could not, under the old system, have obtained relief from Parliament. We may hope that this rush of business will not continue and that it is due to the practical denial of relief to all but the wealthy which formerly existed. However this may be, it would certainly appear, from the reports in the daily papers, that there is considerable reason to fear that under the new system cases will be disposed of so speedily and with so much ease as to open a door for collusion. Whatever may have been the objections to the old action for criminal conversation . . . there can be no doubt that the necessity of obtaining, and of being actually paid, substantial damages before an application for divorce could be obtained operated as a very strong check to collusion . . . We are not without apprehension that collusion may become very common under a system in which the adulterer does not of necessity incur any inconvenience whatever, possibly not even the payment of costs."

In The Law Society's Intermediate Examination held on 20th and 21st March 250 candidates took the Law Portion and 159 passed, of whom nine were adjudged first class. Of 490 candidates for the Trust Accounts and Book-keeping Portion, 243 passed. The Council have awarded the Herbert Ruse Prize, value £11, to Julian Thomas Farrand, LL.B. London.

CONSIDERATION AND THE ABSOLUTE GIFT

IN *Prescott* (otherwise *Fellowes*) v. *Fellowes* [1958] 2 W.L.R. 679; *ante*, p. 271, in consideration of an intended marriage the wife agreed to transfer to the husband "as an absolute gift" certain securities. The question arose whether the transfer of securities pursuant to this agreement constituted an ante-nuptial settlement within the meaning of s. 25 of the Matrimonial Causes Act, 1950. Although the agreement contained none of the usual trusts limiting benefits in succession, Stevenson, J., found that the transaction constituted an ante-nuptial settlement because, "looking at the deed as a whole, and having regard to the position of the parties when they entered into it as it appears from the language of the document and the affidavits before me, I have no doubt that it was a provision made by Lady Prescott in favour of the man whom she was intending to marry and made in his favour in the character of an intended husband. I have no doubt that it was in fact made in consideration of the marriage which was to take place on the day following the execution of the deed."

In the course of the hearing of that case a somewhat novel argument was put to the judge. It was argued that the agreement contained a patent ambiguity, in that, if the words "as an absolute gift" were given their full meaning, they could not be reconciled with the words "in consideration of marriage." The learned judge gave no decision on this part of the case.

Without a full report of counsel's argument, it is not possible to tell precisely on what authority this argument was based. The judge does not appear to have been referred to any of the many cases in which the meaning of the word "absolute" has been considered. On the face of it, it seems extremely surprising to have it suggested that *absolute* in this context bears any relation to the existence, or want, of consideration. The word would surely appear to relate to the nature of the gift and not to the nature of the giving.

"Absolute"

The word *absolute* has been judicially considered in a number of different contexts. In conveyancing practice, it is met in the expression "an absolute fee," i.e., a perpetual as opposed to a determinable fee or to a base fee (see *Seymour's Case* (1612), 10 Co. Rep. 955, at p. 975). It is also met in the expression "a term of years *absolute*" (see s. 1 (5) of the Law of Property Act, 1925). Here, so far as it means "perpetual," it must mean perpetual for the duration of the term granted. Although a term of years may be absolute, it is determinable at any time in accordance with the provisions of the lease, e.g., by forfeiture pursuant to a covenant for re-entry. Subject to being so determined, the estate granted by the lease will last until the end of the term. In that sense a mortgage interest in land is not "*absolute*," for it is determinable at any time after the expiration of the legal date for redemption, e.g., by repayment of the moneys due. Thus in conveyancing practice it may be said unhesitatingly that, in the phrase "*absolute* gift," *absolute* would refer not to the existence of consideration but to the nature of the gift, a gift the subject-matter of which will belong to the donee perpetually and so as to give him *plene dominium* over the subject-matter.

This meaning of "perpetual" which *absolute* gives to property is also to be found in cases of easements. Thus, in considering the words "*absolute* and indefeasible" in relation to an easement of light, Vaughan Williams, L.J., held that they imposed a burden for ever on the servient land (*Fear* v. *Morgan* [1906] 2 Ch. 406, at p. 418).

In construing the word *absolute* as a word that relates to the nature of the gift and not to the cause of the giving, additional support is found in the following type of cases. Thus, in the case of a gift of "all my effects . . . *absolutely* to my sister . . ." Sargant, J., said of the word "*absolutely*" that if it was used by someone acquainted with legal language it might be construed as describing the extent of the interest in the property given, but if used by a lay person it would mean "out and out" (*Re Foord* [1922] 2 Ch. 519, at p. 522). It would appear that the word can bear a similar meaning in Scotland, where a gift "in *absolute* property" was held to be one "without any ulterior destination" (see *Re White* 30 Sc. L.R. 463).

Returning to English law, Lord Davey in *Comiskey* v. *Bowring-Hanbury* [1905] A.C. 84, at p. 90, considered that, in a gift of real and personal estate *absolutely*, the word *absolutely* only defined the amount of the estate given. In the phrase "to the abbess of the convent *absolutely*," Clauson, J., construed *absolutely* as meaning a gift free from any fetter or trust (see *Re Ray's Will Trusts* [1936] Ch. 520). Thus the Court of Appeal in *Re Rees* [1950] Ch. 204 considered that a bequest "unto my trustees *absolutely*" was a gift free from any fetter which would prevent the trustees from carrying out the testator's intention. Where "*absolutely*" followed "heir-at-law" it was said to be used as a word of limitation, i.e., identifying the nature of the estate granted (*Re Hussey and Green's Contracts* [1921] 1 Ch. 566). It will be seen that in none of these cases does the word "absolute" relate to the transaction, but always it defines the nature of the gift. Thus, having recourse to another kind of case, persons "*absolutely* entitled" to property are not persons who have not given any consideration for the gift, but persons with power to sell (see, e.g., *Re Hobson's Trusts* (1878), 7 Ch. D. 708).

Both equity and common lawyers have had to consider the word *absolute* in relation to assignments and particularly to assignments within the meaning of s. 136 of the Law of Property Act, 1925, replacing s. 25 (6) of the Judicature Act, 1873. Here too, however, the word relates not to the assigning but to the assignment. Thus assignment must be without reservation, an assignment of the whole of the legal right (*Durham Bros.* v. *Robertson* [1898] 1 Q.B. 765, at p. 773), an assignment that is effective in passing the whole right and interest of the assignor (*Hughes* v. *Pump House Hotel Co.* [1902] 2 K.B. 190), in short, an assignment of such a kind that it will give to the assignee the rights of s. 136.

When it qualifies "assignment," the word *absolute* is used in a different sense to that used when it qualifies "gift." This difference is exemplified in the cases of mortgages: a mortgage can be the subject of an *absolute* assignment, e.g., an assignment without the reservation of any rights (*Tancred* v. *Delagoa Bay & East Africa Railway Co.* (1889), 23 Q.B.D. 239), but it does not create an *absolute* estate in property because it is subject to the equity of redemption.

Conclusion

In a dissenting judgment in *Re Culworth* [1899] 1 Ch. 642, Rigby, L.J., said that "if any independent meaning can be given to '*absolutely*'" it must be unconditionally. Remotely, such an *obiter dictum* may lend some slight colour to support

the argument put to Stevenson, J., but otherwise all the authorities seem to be at variance with that argument, so far as it relies on the word "*absolute.*" How far there is a contradiction between a "*gift*" made *in consideration* of marriage is another matter, though even on this basis the argument is novel and one which will not find ready favour with all.

J. H. H.

THE FINANCE BILL—A SUMMARY

Part I—Purchase Tax

CLAUSE 1 and Scheds. I and II propose various detailed amendments to the rate of purchase tax charged upon different categories of goods, and cl. 2 proposes that local authorities and other bodies shall be deemed for purchase tax purposes to be carrying on a business whether they are doing so or not.

Part II—Customs and Excise

The whole law of entertainments duty was consolidated in the Entertainments Duty Act, 1958, which received Royal Assent on 20th February of this year: the amendments now proposed render a good deal of that consolidating statute otiose. Entertainments duty is now charged only upon cinematograph or television performances, and it is proposed that the normal rate shall, as from 3rd May, 1958, be one-third of the amount by which the total payment for admission exceeds 1s. 6d. subject as before to the reductions and exemptions available for mixed entertainments or for educational or charitable entertainments. It is also proposed that after 4th October, 1958, entertainments duty shall no longer be paid by means of stamps but shall be otherwise accounted for by the proprietor of the entertainment.

Clause 4 and Sched. III propose variations in the excise duties upon wines. Those readers who are interested in the subject will doubtless already have noticed that the result of such amendments is that port and sherry, but not table wines, are to be 2s. per bottle cheaper.

Clause 5 and Sched. IV propose a duty at the rates therein mentioned upon sweets. At first sight it might be hoped that this is a belated attempt to catch up with the non-smoker but such hopes are vain because closer inspection shows that the duty is not upon bullseyes, toffees, etc., but rather upon British wines and other such fermented liquors. Clause 6, for some reason which we do not pretend to understand, repeals the spirits duty on certain methyl alcohol.

Clause 7 proposes to introduce rather more flexibility into the periods for which road vehicle licences may be issued, and cl. 8 proposes that a vehicle shall not require a road licence for the purpose only of its being driven to or from a compulsory test of its mechanical fitness. Clause 9 proposes a highly technical amendment relating to dog licences.

Part III—Income Tax

Rates

Clauses 10 and 11 propose no change in the rates of income tax and sur-tax.

Reliefs

In addition to the small income relief given by the Finance Act, 1952, s. 15, and available to all taxpayers irrespective of age, the Finance Act, 1957, s. 13, provides a further type of small income relief available in any case where the taxpayer or his wife living with him is at any time during the relevant year of assessment aged 65 years or upwards. In such a case if the taxpayer is a single man he is entitled to total exemption if his income does not exceed £250, and if he is a married man living with his wife he is entitled to total exemption if his income does not exceed £400. There is a species of margin relief in that if the taxpayer's income exceeds the appropriate limit by not more than £50 he may have the tax payable in respect of his total income reduced to an amount equal to half the excess over the appropriate figure. It is proposed by cl. 12 (1) that for the figures of £250 and £400 there shall be substituted the figures of £275 and £440 and that the excess which will enable marginal relief to be had shall be £55 rather than £50.

By the Income Tax Act, 1952, s. 211, where the taxpayer or his wife living with him is over sixty-five years at any time and his income in the year of assessment does not exceed £700 he is entitled to an allowance of two-ninths on the whole of his income whether or not it is earned, such allowance being in lieu of, and not in addition to, earned income relief if any of the income is earned. There is a measure of marginal relief in that any such taxpayer whose income is slightly over £700 may claim to be assessed as though his income were exactly £700, paying tax in effect at 12s. in the £ on the excess. By cl. 12 (2) it is proposed that for the figure of £700 there should be substituted the figure of £800.

By the Income Tax Act, 1952, s. 216, a taxpayer who maintains at his own expense such a relative of his own or of his wife as is there mentioned may, if the relative's total income from all sources does not exceed £105, claim an allowance of £60 in respect of each such relative. If the relative's income exceeds £105 the allowance of £60 is to be reduced by the amount of the excess. It is proposed by cl. 12 (3) that the reduction shall only be effective to the extent that the relative's income exceeds £135, from which it follows that some relief can be had for a relative whose income does not exceed £195.

Initial allowances

Clause 13 proposes some variations in the amount of initial allowances in relation to expenditure incurred on or after 15th April, 1958. It is proposed that in the case of industrial buildings and structures, etc., the initial allowance should be one-eighth; in the case of machinery and plant, one-quarter and in the case of dredging operations, one-eighth.

Deductions under Sched. E

Clause 14 contains some very restricted proposals whereby in computing the taxable emoluments of an office or employment certain fees or contributions and certain subscriptions may be deducted.

The fees or contributions which may be so deducted are those mentioned in Sched. V: they include the fee and contribution payable to a compensation fund or guarantee fund on the issue of a solicitor's practising certificate and they also include fees payable in respect of the retention of the taxpayer's name in the register of architects, ancillary dental workers, dispensing opticians, registered patent agents, pharmaceutical chemists and veterinary surgeons. Such fees

or contributions may be deducted only if it is a condition of the performance of the duties of the office or employment that the office holder or employee be so registered. Accordingly, where a solicitor is employed by another in general practice the fees, etc., payable on the issue of the annual practising certificate would be allowable but it would seem that where a solicitor is employed, for instance, by the trustee department of one of the banks they would only be deductible if the employee was required not only to possess the knowledge which a solicitor may be expected to have but also to take out a practising certificate.

Subscriptions as distinct from fees or contributions must be to bodies of persons approved for the purpose by the Commissioners of Inland Revenue and it is indicated that professional associations such as, for instance, the Institute of Chartered Accountants or the Royal Institute of British Architects will be so approved. Such subscriptions may be deducted if, but only if, the performance of the duties of the office or employment is directly affected by the branch of knowledge or professional activities with which the relevant body of persons is concerned.

Property of Charities

By the Income Tax Act, 1952, s. 103 (1) (*c*) and s. 448 (1) (*a*) and (*b*), certain reliefs are given to hospitals, public schools, almshouses and other charities so long as the properties concerned are not occupied by a person whose total income amounts to £150 per annum or more. Clause 15 proposes that that income limit should be abolished.

Dividend stripping

The art of dividend stripping was greatly affected by the provision of the Finance (No. 2) Act, 1955, s. 4, which was designed to make it impossible and succeeded in making it more difficult. After an interval of two and a half years, which has no doubt been devoted to intensive cogitation by those responsible for such things, cl. 16 proposes some amendments to the 1955 Act designed to make that art more difficult still. The effect of such amendments may be best left to those who specialise in such matters, but readers whose curiosity has been stirred by the publicity which has recently surrounded the subject may be referred to the account at p. 335, *ante*, of the nature of dividend stripping as practised both before and after the enactment of the Finance (No. 2) Act, 1955. The effects of cll. 16 and 17 are briefly indicated in that article.

Settlements

The Income Tax Act, 1952, s. 404 (1), is concerned with obligations which are therein called settlements, but are more usually described as covenants to pay annual sums. It provides, in short, that if any person has power as therein mentioned to revoke or otherwise determine the obligations, or if the covenantor or his or her spouse may upon the payment of a penalty escape a continuing obligation to make the payments, then unless the power cannot be exercised for a period of six years, the sums payable under the covenant shall, for taxation purposes, be treated as the income of the covenantor rather than of the covenantee. The Income Tax Act, 1952, s. 404 (2), is concerned with settlements more properly so called, that is to say, settlements of capital, and it is provided that if and so long as the terms of the settlement are such that any person has power as therein mentioned to revoke or otherwise determine the settlement or any provision thereof so that in event of the exercise of the power the settlor or the spouse of the settlor may or will become beneficially entitled to the whole or any part of the settled property, then unless the power cannot be exercised for a period of six years the income arising from the settled property is to be treated for income tax purposes as the income of the settlor rather than of the beneficiaries.

In *Inland Revenue Commissioners* v. *Saunders* [1957] 3 W.L.R. 474 the House of Lords, considering s. 404 (2), held that a power whereby a provision of a settlement might be partially determined in the sense that a specified sum, say £100, could not be affected by the power, was not within the provision so that the income for tax purposes was treated as the income of its real owner and not of the settlor. This decision, as was to be expected, was unpopular with the Commissioners of Inland Revenue, and it is proposed by cl. 18 that the references in s. 404 to powers to revoke or determine should include powers to diminish the amount of such payments or the amount of settled property subject to any provision of the settlement, and that where such powers to diminish exist an amount of the income proportionate to the amount of such possible diminution is to be treated as the income of the settlor rather than the income of its true owners. It is proposed by sub-cl. (4) of cl. 18 that, in the case of settlements made before 16th April, 1958, the provisions shall have no effect if the offending power is released or disclaimed at the expiration of three months from the passing of the Act and if neither the settlor nor his spouse receive any consideration in respect of the release or disclaimer: apparently it matters not that any consideration in respect thereof is payable to any other person.

Time Limits

By cl. 19 and Sched. VI numerous alterations are made in the various time limits to be found in the Income Tax Acts.

[*To be concluded*] G. B. G.

THE LOCAL GOVERNMENT LEGAL SOCIETY

The annual provincial meeting of the LOCAL GOVERNMENT LEGAL SOCIETY took place on the 3rd May, 1958, at Blackpool, where the mayor and corporation kindly gave luncheon to some sixty members of the society. The speaker at the morning session at the Town Hall was Mr. J. A. G. Griffiths, LL.M., Barrister-at-Law, Reader in English Law, University of London and editor of *Public Law*. Mr. R. N. D. Hamilton, chairman of the society, presided.

In his paper, entitled "Local Government in a Changing Constitution," Mr. Griffith began by referring to the new Local Government Bill and emphasising that its effect was likely to give rise to a greater need for the development of public relations.

He was of opinion that the growing regulatory powers of government had not, at the local level, been matched by a comparable increase in public control and the provincial press seemed to be frequently in financial difficulties, while wireless and television were national or regional bodies.

Mr. Griffith then referred to the growing use in national government of commissions and committees, to the belief in the foolproofness of the scientific approach to political problems and to the consequent decline in the status of politicians; and considered how these developments affected local government.

Finally, he referred to the notion of Ministerial responsibility and the fictions that surrounded it and considered how far senior local government officials might be made more directly responsible.

A "RESTRICTED STREET" DECISION

A MOTORIST left his van unattended in a restricted street. He took two parcels into an adjoining building and whilst there was asked by his employer to take out an electric fire for delivery to a customer. In all he was away from his van for eighteen minutes. When he returned to it he found a police officer waiting, who summoned him for causing the van to wait in a restricted street during the prescribed hours contrary to the Central London (Waiting and Loading) (Restriction) Regulations, 1957. The van driver contended that he had committed no offence because reg. 3 provided that he could leave his van in the street for a maximum of twenty minutes if he was "delivering or collecting goods or merchandise or loading or unloading the vehicles at premises situate within the street if it is not reasonably practicable to load or unload the vehicle in any neighbouring street not being a restricted street."

In a considered judgment, Mr. T. F. Davies, metropolitan magistrate sitting at Clerkenwell Magistrates' Court on 18th April, rejected this contention and imposed a fine of twenty shillings. He gave as his reason for his decision that the first proviso to reg. 3 envisaged that the vehicle (as distinguished from the driver) must be actually engaged in delivering or collecting or loading or unloading during all the twenty minutes. In the present case during most of the eighteen minutes the van was in the street none of these activities was taking place. Further the second proviso required the driver to remain with the vehicle all the time in case the police wanted it to be moved should an emergency arise. Otherwise a driver could leave his vehicle for twenty minutes with impunity and no charge could be made if he subsequently gave as his excuse that he was delivering or collecting goods. This proviso confirmed his view that the loading or unloading must be in operation the whole time the vehicle was in the street. Finally, the magistrate drew attention to reg. 4, which specifically exempted vehicles being used for some exceptional purpose—for furniture removal or by postmen, firemen and the police. The inference was that the use of all other vehicles came under reg. 3 and was subject to the restrictions he had mentioned. It is possible that the magistrate's decision may be tested in the Divisional Court. If so, the case should form a valuable footnote to these somewhat involved regulations.

F. T. G.

Landlord and Tenant Notebook

NOTICE TO QUIT FARM

ATTENTION is drawn to both recent and proposed changes in the law relating to agricultural holdings by two recent decisions: *Davies* v. *Price* [1958] 1 W.L.R. 434; *ante*, p. 290 (C.A.), and *Costagliola* v. *Bunting* [1958] 1 W.L.R. 580; *post*, p. 364. The first mentioned concerned the validity of an Agricultural Land Tribunal order consenting to a landlord's notice to quit, and the question of remedy was referred to; the second, the validity of a landlord's notice to quit purporting to be given on the ground of the death of the tenant. Both illustrate the operation of the security of tenure provisions of the Agricultural Holdings Act, 1948.

Efficient farming

In *Davies* v. *Price* landlords had served a plain, s. 24 (1) notice to quit, not alleging any of the matters set out in subs. (2), and, on the tenant serving the appropriate counter-notice, had obtained the consent of the Flint County Agricultural Executive Committee (on behalf of the Minister of Food, etc.), whose decision was upheld by the Agricultural Land Tribunal for Wales and was expressed in these terms: ". . . The landlords have satisfied the tribunal that it is in the interests of efficient farming of the land in question to terminate the tenancy of the appellant. The appellant has been employed as a full-time shift worker at a factory in Flint since 1954; the standard of production is and has for some time been unsatisfactory; and the holding has been inefficiently farmed in many respects . . ."

The grounds to be proved (as the law stands) before ministerial consent may be granted include s. 25 (1) (*a*): "that the carrying out of *the purpose* for which the landlord proposes to terminate the tenancy is desirable in the interests of efficient farming, whether as respects good estate management or good husbandry or otherwise," and the tenant sought certiorari and mandamus on the grounds that there was no reference to purpose and that a "statement of case and general grounds for the Minister's decision" supplied by the secretary of the C.A.E.C. to the tribunal (Agriculture (Procedure of Agricultural Land Tribunals) Order, 1948, reg. 4 and Sched. I, Pt. II) had shown that the landlords had not decided whether to sell or to re-let if they got possession.

The difficulty confronting the tenant was that, in order to obtain the relief sought, he had to show error in law on the face of the record.

Purpose

Agreeing that, as had been laid down in *R.* v. *Agricultural Land Tribunal for Eastern Province of England; ex parte Grant* [1956] 1 W.L.R. 1240, there must be a comparison between the existing regime and the proposed regime, the Court of Appeal would not accept the contention that the omission complained of made the record bad on the face of it. The tribunal were not bound to state any reason, and they had not said that the reason which they did state was the only one. The wording, it was held, supported the view that they had found that it was in the interests of efficient farming to terminate the tenancy by drawing the required comparison.

As to what actually has to be compared with what, one of the propositions to be found in the judgments is, in my respectful submission, open to criticism. Parker, L.J., said: "No doubt the less efficiently the land is being farmed by the existing tenant, the easier it will be for the landlord to say that the proposed user, if the tenancy is terminated, will be *more* efficient. But it seems to me that a landlord must give some evidence of the proposed user and the tribunal can then and must proceed to make a comparison."

If this implies, as it appears to, that a landlord is entitled to recover possession merely by showing that he is a better farmer than his tenant, I respectfully suggest that it goes

beyond what the legislation contemplates and provides. A comparison between efficiency and inefficiency is one thing; a comparison between more efficient and less efficient is another, and it may be questioned whether it is " in the interests of efficient farming " to consent to a notice to quit merely because the result is likely to be *some* increase in production. The paragraph concludes, it will have been observed, with " whether as respects good estate management, or good husbandry or otherwise "; the definition of " good estate management " in the Agriculture Act, 1947, s. 10, speaks of " efficient production," that of " good husbandry " in s. 11 of " a reasonable standard of efficient production "; neither calls for the highest possible degree of efficiency. (See further, on this point, the " Notebook " for 13th July, 1957, 101 SOL. J. 545.)

" The record "

The tenant's complaint that the tribunal had ignored evidence showing that the landlords intended to sell with vacant possession raised the question whether the " statement of case " was or was not part of the record. Without deciding whether a document which merely sets out arguments and facts proved before the committee was part of the record, the court, inclining to the view that it was not, held that in any event it would not help the appellant. The reference to the Agricultural Land Tribunal was a hearing *de novo*, and it could not be said that they had misconstrued the statute or acted on no evidence.

Parker, L.J., pointed out that the tenant might have appealed by way of case stated (Agriculture (Miscellaneous Provisions) Act, 1954, s. 6). Looking ahead: the Agriculture Bill proposes that Agricultural Land Tribunals should hear, and not re-hear, applications for consent to notices to quit.

Death of tenant

The farm which was the subject-matter of *Costagliola* v. *Bunting* had been let by the plaintiff's predecessor in title to the father of the two defendants. He died in 1932 and his widow, who was also his personal representative, continued in occupation on the terms of the tenancy. The report does not say whether she executed a formal assent or, indeed, whether she was the person entitled to the tenancy. She died on 8th March, 1956, intestate. The defendants were their sons whom the plaintiff served, as the widow's personal representatives, on 23rd May, 1956, with a notice to quit stating that it was given, in pursuance of s. 24 (2) (*g*) of the Agricultural Holdings Act, 1948, for the reason that " the said Sarah Bunting the late tenant " had died within three months before the date of the giving of this notice to quit. The defendants served a s. 24 (1) counter-notice, but the Minister's consent was not obtained; one expects that it was never sought. But, when sued for possession, the defendants pleaded that their mother was not the tenant with whom the contract of tenancy was made.

Whether the mother had been the father's executrix or his administratrix would probably not matter, but it is curious that she is described in the headnote and statement of facts in the All England Reports ([1958] 1 All E.R. 846), though not in the Weekly Law Reports, as the former but in the judgment as the latter. Gorman, J., mentioned that he had seen the letters of administration; and I propose to act upon the *crede experto* principle.

" Tenant " is defined by s. 94 (1) of the Act: it means, unless the context otherwise requires, the " holder of land under a contract of tenancy, and includes the executors, administrators, assigns, committee of the estate, or trustee in bankruptcy of a tenant, or other person deriving title from a tenant."

It was conceded that the defendants' mother had been *a* tenant of the farm; but when it came to considering whether she had been " the tenant with whom the contract of tenancy was made " two arguments were advanced for the plaintiff. One was that " tenant " in s. 24 (2) (*g*) had the width of the above definition in s. 94 (1). It may be that the " unless the context otherwise requires " was invoked, but Gorman, J., had no hesitation in rejecting the suggestion. The other was that, alternatively, a contract of tenancy had been made between the mother and the plaintiff's predecessor in title or someone else; but the learned judge could find no evidence to show that she had ever ceased to be the holder of the land by virtue of her being administratrix of her husband's estate. The notice to quit was, therefore, " a bad notice because Mrs. Bunting was not the person who came within the scope of the word ' tenant ' in s. 24 (2) (*g*) " of the Agricultural Holdings Act, 1948.

It may be that if the defendants had not served a s. 24 (1) counter-notice the position would have been different. We have as yet no authority to show what happens if a landlord serves a s. 24 (2) notice assigning a non-existent reason and the tenant merely disregards it.

The reason

The language of the provision being plain, it was not necessary to go into objects; but, as a matter of interest, and one the more interesting because of the Agriculture Bill proposals to modify security of tenure, I may make a short comment on Gorman, J.'s statement that it was often difficult to find the reason for such legislation. If one looks at s. 24 (2) as a whole one finds seven sets of facts which will make a notice to quit, given and stated to be given by reason of those facts, immune from counter-notice challenge. All but the last have some reference to conduct by the tenant or intention of the landlord, and it does, at first sight, seem strange that such an event as a death should entitle the landlord to recover possession. But if one considers the whole scheme of security of tenure, the explanation that suggests itself is this: if the tenant farmer is to be conditionally irremovable, the landlord must be left some say in choosing who shall be his tenant; and it should be borne in mind not only that many landlords fail to stipulate for restrictions of alienation (indeed, the model terms in Sched. I to the Act do not provide for such) but that, if they do, such restrictions are not infringed by involuntary assignment, such as occurred in *Costagliola* v. *Bunting*.

R. B.

Councillor R. H. BRYANT, solicitor, of St. Leonards-on-Sea, has been elected Mayor of Hastings for the ensuing year.

Mr. DOUGLAS H. MASON, a member of the staff of the Bradford City Justices' Clerk's Department, has been appointed deputy magistrates' clerk for the Lower Agbrigg Petty Sessional Division in the Wakefield county area and Batley and Morley boroughs. He will take up his duties on 2nd June.

Mr. E. J. E. LAW, Assistant Judge, Zanzibar, has been appointed a Puisne Judge in Tanganyika.

Mr. A. E. W. WARD, assistant solicitor to the Ministry of Pensions and National Insurance, has been appointed solicitor to the Ministry in succession to Mr. J. P. Davies, who is retiring. Mr. Ward has also been appointed solicitor to the National Assistance Board in succession to Mr. Davies.

HERE AND THERE

NOT PREDESTINED

PREDESTINATION and determinism, the belief that you and I and everything about us are what we are, and could be no other, by reason of an inevitable concatenation of cause and effect from the beginning, present (to say the least of it) difficulties to anyone who can spare a few moments from theorising to watch the wayward, wilful, ingenious, struggling members of the human race playing the fool all around us now and across the centuries in twenty million different ways. The ants and the bees, the Barbary apes and the elephants all have highly entertaining behaviour patterns but their warmest admirers must admit that they are in something of a rut, even the wildest of them. But the wildest of all animals are men and women, because the closest of observers can never tell beforehand what they will be up to next. This can be tested in a thousand ways and in no way more vividly than in the variations of those flexible, portable dwellings that they build around themselves for shelter, against the elements and for fun, the ever-changing clothes with which they disguise themselves. Some cloaks and skirts have resembled nothing so much as tents. There have been times when clothes have been built on a framework like the skeleton of a building. Men have covered their heads with chimney-pots and domes or thatched them with horsehair. Women have crowned themselves with steeples.

THE WHITE HAT

ALL this fairyland of unpredictability is so inexhaustibly fascinating precisely because, as with all acts of creation, no one can foretell it before it has actually happened, although the psychiatrists have a pretty well developed talent for being portentously wise after the event. Could anyone have foreseen before it actually happened that the juvenile delinquents of the nineteen-fifties would suddenly disguise themselves as caricatures of Edwardian dandies? I cannot remember that anybody even hinted at the possibility. A week or two ago a letter in the *Sunday Times* recalled another even more improbable twist in the history of dress, the little-remembered fact that the ceremonial chef is a sort of caricature of a French barrister, since his tall white cap is directly and deliberately derived from the *toque* of the French law courts, the high, black brimless cylindrical cap, still part of the full dress of the judges and formerly worn also by the Bar. It started as a gesture of an eccentric barrister turned gastronome, Grimod de la Reynière, whose lifetime bridged pre-Revolutionary and post-Napoleonic France. He was born in Paris in 1758 and called to the Bar there, but before he was thirty his eccentricities prompted his relatives to apply for a *lettre de cachet* (a sort of prerogative writ for committal to indefinite custody) under which he was confined in a religious house. Two years later, in 1788, he was released to the sound of the first rumblings of the French Revolution. Thereafter he turned his face steadfastly away from the courts and towards the dining-room. From 1803 to 1812 he gained great success with his *Almanach des Gourmets*. Napoleon fell. The Bourbon monarchy returned and fell a second time. The democratic monarchy of Louis-Philippe installed itself. Grimod de la Reynière ate his way philosophically through every constitutional and legal change in the national landscape. He died in 1838, and his monument is the *toque blanche* which under his influence replaced the long, tasselled white cotton night-cap type of headgear that chefs used to wear. The enormous height of the modern chef's hat is a fairly recent innovation. Another member of the French Bar, Brillat-Savarin, a contemporary of Grimod, attained equally enduring celebrity as a gastronome. He approached the table in a mood of judicial solemnity believing that a fine meal should be consumed in a sacramental silence.

FRAGRANT MEMORY

IT is a pleasing thought that, if only the English had been a seriously gastronomic race, chefs, instead of wearing tall white caps, might all be wearing now enormous wigs. On the face of it, that is how it might have happened, since in no other country in the world is eating dinners a qualification for admission to the Bar; for a time it was the only qualification. At Gray's Inn the chef still comes into Hall towards the end of dinner to present the next day's menu to the Benchers. He is then given a glass of port and expected to swallow it at a gulp as if it were vodka. To the serious gastronome this will rather suggest a practical joke than a culinary artist's reward, a manifestation of a high seriousness in the things of the table. If lawyers had been highly serious in such things, Coke and Nottingham and Holt and Buckley would be as famous for dishes dedicated to them as for text-books and judgments. In every restaurant and in the happiest sense they would be "familiar in the mouth as household words," their memory bathed in savoury sauces, their names fragrant within the nostrils of posterity, their very ashes smelling sweet. Alas! No steak or sole bears the name of Hardwicke. Wensleydale cheese is not called after Mr. Baron Parke. For the world at large the aroma of the sages of the law is that of rather musty calf-skin when it might be roast veal.

RICHARD ROE.

Mr. CLIVE STUART SAXON BURT, Q.C., has been appointed a Metropolitan Magistrate in succession to Mr. John Fitzgerald Marnan, M.B.E., Q.C., who has resigned for personal reasons.

Mr. CLYDE VERNON HARCOURT ARCHER, Puisne Judge, Trinidad and Tobago, has been appointed Chief Justice of the Windward Islands and Leeward Islands in succession to Sir Donald Jackson, who has recently retired. Mr. Archer will serve as a Temporary Federal Justice, the West Indies, for a limited period before taking up the duties of his new appointment.

Mr. G. S. GIBBONS, clerk to Nuneaton and Atherstone Magistrates, has been appointed clerk of the three Hampshire Petty Sessional Divisions of Eastleigh, Tatton and New Forest and Romsey. He will take up his new appointment in July.

Mr. T. J. GOULD, Senior Puisne Judge, Hong Kong, has been appointed Justice of Appeal, Court of Appeal for Eastern Africa.

The following promotions are announced in the Colonial Legal Service:—

Mr. G. S. EDWARDS, Clerk of the Court, Hong Kong, to be Deputy Registrar, District Court, Hong Kong; Mr. J. C. HOOTON, Deputy Legal Secretary, E.A.H.C., to be Attorney-General, Bermuda; Mr. B. J. JENNINGS, President, Sessions Court, Malaya, to be Magistrate, Hong Kong; and Mr. W. R. WICKHAM, Magistrate, Aden, to be Chief Magistrate, Aden.

In recognition of his long and distinguished services to the Legal and General Assurance Society, Ltd., of which he has been a director for forty-four years, the Hon. W. B. L. Barrington, (a member of the Council of The Law Society in 1909–11), who retires from the chairmanship and the board on 30th June, has been appointed the first president of the society as from 1st July, 1958.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

CYPRUS: COLLECTIVE FINE ORDER: VALIDITY

Ross-Clunis *v.* Papadopoullos and Others

Lord Morton of Henryton, Lord Somervell of Harrow, Lord Denning

17th March, 1958

Appeal from the Supreme Court of Cyprus.

The appellant, the Commissioner of Limassol, Cyprus, after holding an inquiry, made an order under reg. 3 of the Cyprus Emergency Powers (Collective Punishment) Regulations, 1955, imposing on the assessable Greek-Cypriot inhabitants of Limassol a collective fine of £35,000 on the ground that, in the words of reg. 3, he had "reason to believe that" a substantial number of the inhabitants of the area had "failed to take reasonable steps to prevent the commission of" a number of murders and other offences, and had "failed to render all the assistance in their power to discover the offenders." Regulation 5 provided that: "(2) In holding inquiries under these regulations the Commissioner shall satisfy himself that the inhabitants of the said area are given adequate opportunity of understanding the subject-matter of the inquiry and making representations thereon, and subject thereto, such inquiry shall be conducted in such manner as the Commissioner thinks fit." The Collective Punishment Regulations were made under s. 6 (1) of the Emergency Powers Order in Council, 1939, which provided that "the Governor may make such Regulations as appear to him to be necessary or expedient for securing the public safety . . . the maintenance of public order." The respondents, representative Greek-Cypriots, sought to have the appellant's order quashed on the grounds, *inter alia*, (1) that reg. 3 in so far as it purported to empower the imposition of a collective fine was contrary to natural justice and was *ultra vires* as going beyond the powers of the Governor under s. 6 (1) of the Order in Council of 1939; and (2) that the requirements of reg. 5 (2) had not been complied with. Affidavit evidence of the appellant and the respondents stated their respective views of what had occurred at the inquiry. As a result of the decision of the courts in Cyprus the appellant's order had been quashed, and he now appealed.

LORD MORTON OF HENRYTON, giving the judgment, said that reg. 3 was clearly "related to the purposes prescribed" by s. 6 (1) of the Order in Council of 1939 within the meaning of those words in *A.-G. for Canada* v. *Hallet & Carey Ltd.* [1952] A.C. 427 and was *intra vires*. The purpose of imposing a collective fine was to ensure that the inhabitants of the area would adopt an attitude more helpful to "securing the public safety" and "the maintenance of public order," two of the purposes specified in s. 6 (1) of the Order in Council. Secondly, if it could be shown that there were *no* grounds on which the Commissioner could be satisfied that, within the meaning of reg. 5 (2), the inhabitants of the area were given adequate opportunity of understanding the subject-matter of the inquiry and making representations, a Court might infer either that he did not honestly form that view or that in forming it he could not have applied his mind to the relevant facts; in the present case, however, there were ample grounds, as stated in his affidavit evidence, on which he could feel "satisfied" of the matters mentioned in reg. 5 (2). Further, the manner in which the inquiry should be conducted was, in the terms of reg. 5 (2), "as the Commissioner thinks fit," and was thus a matter for the Commissioner and not for the court. The order made by the Commissioner was accordingly valid. Appeal allowed.

APPEARANCES: *B. MacKenna*, Q.C., and *J. G. Le Quesne* (*Charles Russell & Co.*); *Sir David Cairns*, Q.C. and *Ian Baillieu* (*Ince, Roscoe, Wilson & Griggs*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 546**

Court of Appeal

RESTRAINT OF TRADE: AGREEMENT BETWEEN COMPANIES AS TO ENGAGEMENT OF SERVANTS

Kores Manufacturing Co., Ltd. *v.* Kolok Manufacturing Co., Ltd.

Jenkins, Romer and Ormerod, L.JJ. 31st March, 1958

Appeal from Lloyd-Jacob, J. ([1957] 1 W.L.R. 1012; 101 SOL. J. 799).

By letters dated 30th August, 1934, and 3rd September, 1934, respectively, two companies agreed that neither company would, without the written consent of the other company, employ any person who had been a servant of the other company during the previous period of five years. The letters were silent as to the duration of the proposed agreement. In an action commenced in 1957 by one of the companies against the other company claiming (1) a declaration that the agreement was a valid and subsisting agreement; (2) an injunction to restrain the defendants from employing a certain employee of the plaintiffs without the plaintiffs' consent in writing contrary to the agreement and (3) an injunction to restrain the defendants from employing without the consent of the plaintiffs in writing any person who during the period of five years immediately preceding the commencement of such employment was in the employment of the plaintiffs, Lloyd-Jacob, J., held that the contract was void on the grounds that it was in restraint of trade and contrary to public policy, in that on the facts the period of five years was longer than was required to protect the parties' legitimate interests, imposed an unreasonable fetter on the freedom of a workman to offer his labour, and could in certain circumstances produce a public mischief. The plaintiffs appealed. *Cur. adv. vult.*

JENKINS, L.J., delivering the judgment of the court, said that the general principles to be applied were not in doubt; the difficulty lay in their application to the facts of particular cases. Lord Birkenhead in *McEllistrim* v. *Ballymacelligott Co-operative Agricultural and Dairy Society, Ltd.* [1919] A.C. 548, at pp. 562, 563, had said: "A contract which is in restraint of trade cannot be enforced unless (*a*) it is reasonable as between the parties, (*b*) it is consistent with the interests of the public." In the present case there were two questions which had to be answered: (1) what was it for which protection was required and (2) what was it against which protection was required? As to the first question, the court took the answer to be that protection was required by both parties for (*a*) the adequacy and stability of their respective complements of employees and (*b*) as the court were prepared to assume, trade secrets and confidential information of which any of their respective employees might have become, or might thereafter become, possessed in the course of their employment. As to the second question, their lordships took the answer to be that the dangers against which protection was required were (*a*) the unimpeded secession of employees of any grade from the employment of either of the parties to that of the other of them in the competing concern "next door" under the inducement of higher wages or better working conditions, or merely for the sake of change, and (*b*) the divulging to their new employer by employees so seceding of any trade secrets or confidential information of which they might have become possessed in the course of their employment with the other party. In their lordships' judgment, however, the reciprocal restraints imposed by the agreement of 1934 were unreasonable in the interests of the parties to it, and the agreement accordingly failed to satisfy the first of the two conditions which a contract in restraint of trade must satisfy in order to be held valid, and was, therefore, void and unenforceable. Accordingly, the appeal would be dismissed. Appeal dismissed.

APPEARANCES: *Charles Russell*, Q.C., and *Peter Oliver* (*Hardman, Phillips & Mann*); *F. W. Beney*, Q.C., and *R. S. Lazarus* (*Richards, Butler & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 858

SOLICITOR: NEGLIGENCE: FAILURE TO ISSUE WRIT IN DUE TIME: WHETHER " RIGHT OF ACTION CONCEALED BY FRAUD "

Kitchen *v.* Royal Air Force Association and Others

Lord Evershed, M.R., Parker and Sellers, L.JJ. 1st April, 1958

Appeal from Lloyd-Jacob, J.

On 22nd May, 1944, the plaintiff's husband, a member of the Royal Air Force, was electrocuted and killed in the kitchen of his house. His death, the plaintiff alleged, was due to a defect in the control unit of an electric cooker, the wires of which had in 1940 been connected up by the local electricity company. The plaintiff, considering that the electricity company were responsible for her husband's death, consulted the Royal Air Force Association, who sent particulars of her case to a firm of solicitors. These solicitors investigated the matter but did not get any independent report of an expert on the cause of the accident. They allowed the time for proceedings under the Fatal Accidents Act to run out, since they failed to issue a writ on the plaintiff's behalf before 22nd May, 1945. The solicitors tried but failed to get an *ex gratia* payment from the electricity company. However, the plaintiff wrote herself in October, 1946, to the company, and thereupon their solicitor telephoned to the defendant solicitors saying that the company were prepared to make a donation to the Royal Air Force Association of £100 if they were satisfied that the money would be used for the plaintiff's benefit. The defendant solicitors made inquiries and, in the event, the £100 was paid to the association, from which sum five guineas were paid to the defendant solicitors for costs. The fact that this payment had been offered by the company was concealed from the plaintiff and she only discovered some years later that the company had made the payment. Subsequently, in 1950, the plaintiff started proceedings against the electricity company as administratrix of her husband claiming damages under the Law Reform (Married Women and Tortfeasors) Act, 1935. That action was compromised by the payment of £250 by the company. Subsequently, the plaintiff started this action against the Royal Air Force Association and the defendant solicitors, claiming damages for negligence in the formulation and prosecution of her claim arising out of her husband's death against the electricity company. The action, as against the association, was dismissed, but Lloyd-Jacob, J., awarded the plaintiff £2,000 as damages for negligence against the solicitors. The solicitors appealed.

Lord Evershed, M.R., said that on the facts the solicitors were acting as the solicitors of the plaintiff during the years 1945 and 1946, and that the plaintiff's case of negligence against them was made out. But they had pleaded the Statute of Limitations, 1939, as they were entitled to do. It was no doubt true that the court would not be astute in an action by a client against his or her solicitors for proved negligence to find that the solicitors could escape the consequences of their default by relying upon the statute. Still, the appellants were entitled, if the case was made out, to set up the statute. What was more, in the present case the statutory period of six years since the breach of duty had occurred had elapsed long before the action had been brought, and so the onus lay upon the plaintiff to show if she could that the solicitors were disentitled to rely upon the statute. In his (his lordship's) judgment, the failure of the appellants to inform the plaintiff of her possible claim under the Fatal Accidents Acts did not of itself constitute a " concealment " of her right of action against the appellants within s. 26 (1) (*b*) of the Act of 1939, so as to prevent the statute running in the appellant's favour: see *Wood* v. *Jones* (1889), 61 L.T. 551. But if in October, 1946, the solicitors were acting, as he thought they were, for the plaintiff, what was the effect of the appellants' concealment from the plaintiff of the payment of £100 by the electricity company? Did that concealment amount to fraud? He (his lordship) emphasised that there was no finding, and no justification for any finding of dishonesty against the appellants as that word was ordinarily understood. But it was now clear that the word " fraud " in the section was by no means limited to common-law fraud or deceit. Equally, it was clear, having regard to the decision in *Beaman* v. *A.R.T.S., Ltd.* [1949] 1 K.B. 550, that no degree of moral turpitude was necessary to establish fraud within the section. He would not attempt to define what was covered by equitable fraud, but it was clear that the phrase covered conduct which, having regard to some special relationship between the two parties concerned, was an unconscionable thing for the one to do towards the other. Therefore, though he felt considerable difficulty on this part of the case, on the whole he had come to the conclusion that there was here just enough established by the plaintiff to enable her to say that there was concealment by fraud by the appellants, and so to deprive them of the right to set up against her the Statute of Limitations. On the question of damages, in his judgment, what the court had to do (assuming that the plaintiff had established negligence) in such a case as the present, was to determine what the plaintiff had by that negligence lost. The plaintiff had established that there was a case for action and that she had lost something of value, and in the circumstances he thought that the judge's award of £2,000 should stand. He would dismiss the appeal.

Parker and Sellers, L.JJ., delivered concurring judgments. Appeal dismissed.

Appearances: *Patrick O'Connor* and *J. G. H. Gasson* (*Hewitt, Woollacott & Chown*); *Neil Lawson*, Q.C., and *John Wilmers* (*H. C. L. Hanne & Co.*).

[Reported by J. A. Griffiths, Esq., Barrister-at-Law] [1 W.L.R. 563

BUILDING: SAFETY REGULATIONS: PROTECTION FROM FALLING MATERIALS

Bailey *v.* Ayr Engineering & Constructional Co., Ltd., and Another

Jenkins, Parker and Pearce, L.JJ. 18th April, 1958

Appeal from Lloyd-Jacob, J., sitting as an additional judge of the Queen's Bench Division.

Regulation 90 (1) of the Building (Safety, Health and Welfare) Regulations, 1948, requires that any " place on the site of the operations at which any person is habitually employed shall be covered in such manner as to protect any person who is working in that place from being struck by any falling material or article." The plaintiff, an apprentice electrician employed by the first defendants, was working in an open shaft in a block of flats, which were under construction, when he was struck and injured by a falling block of masonry forced out of the side of the shaft by a heavy piece of iron stair rail which had got out of the control of workmen employed by the second defenants who were attempting to place it in position on the stairway. The plaintiff claimed against the first defendants, as his employers, that they were in breach of their duty at common law, and also that they were in breach of reg. 90 of the Building (Safety, Health and Welfare) Regulations, 1948. He also joined the second defendants, alleging that they were in breach of their common-law duty and also that they were in breach of reg. 94 of the regulations. Lloyd-Jacob, J., found that the second defendants were guilty of negligence, but he also held that the first defendants were guilty both of a breach of their common-law duty and their statutory duty, and as between them and the second defendants, held them 30 per cent. to blame. The first defendants appealed against the finding of liability to the plaintiff, and the second defendants appealed in regard to costs only as between themselves and the other defendants.

Parker, L.J., delivering the first judgment, said that in his opinion the first defendants were not in breach of their duty at common law. There remained the claim under reg. 90 (1). Two questions arose on that regulation: one, whether the place where the plaintiff was working was a " place on the site of the operations at which any person is habitually employed," and, secondly, whether this block of masonry which was broken off from the structure of the building could be said to be " any falling material or article " within that regulation. As to the first question, on the authority of *Kearns* v. *Gee, Walker & Slater, Ltd.* [1937] 1 K.B. 187 the shaft in which the plaintiff was working at the time of the accident was an " habitual " or contemplated place of employment, where men would work, and, accordingly, reg. 90 was applicable to the place in question. But the matter did not end there, because the question remained whether this block of masonry could be said to be " any falling material or article " within that regulation. In his judgment, reg. 90 was designed to protect men working at sites where they habitually did work from falling materials and debris and not from a collapse of the structure itself, whether it be a chimney, a roof or (as in this case) part of a shaft; and although it could not be said that the first defendants were not in breach of the regulation at all, since it was their duty to put up some " umbrella," albeit only one designed to prevent

materials, debris and tools from falling down, nevertheless it was not that breach which caused the injury to the plaintiff, because the injury was caused by the fall of a block of masonry, which was not within the contemplation of the regulation, and, therefore, they were under no liability to the plaintiff. In these circumstances the first defendants' appeal succeeded. That being so, the second defendant's appeal did not, in the form presented, arise in this case. Accordingly, he would allow the first defendants' appeal and dismiss the second defendants' appeal.

PEARCE and JENKINS, L.JJ., agreed. Appeal of first defendants allowed. Appeal of second defendants dismissed.

APPEARANCES: *H. I. Nelson*, Q.C., and *R. E. Hopkins* (*Hextall, Erskine & Co.*); *D. P. Croom-Johnson*, Q.C., and *John Hornsby* (*Watson, Sons & Room*); *F. B. Purchas* (*Rowley, Ashworth and Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 882

Queen's Bench Division

AGRICULTURAL HOLDING: NOTICE TO QUIT GIVEN TO ADMINISTRATRIX OF TENANT: VALIDITY

Costagliola *v.* Bunting and Another

Gorman, J. 18th February, 1958

Action tried at Norwich Assizes.

By a memorandum of agreement dated 19th August, 1914, agricultural land was leased by the plaintiff's predecessor in title to one Bunting. On his death in 1932 his widow remained in occupation on the terms of her husband's tenancy until her death on 8th March, 1956. Her sons continued in possession and on 23rd May, 1956, the plaintiff gave them a year's notice to quit. The notice stated that it was given in pursuance of the provisions of s. 24 (2) (*g*) of the Agricultural Holdings Act, 1948, and for the reason that the late tenant had died within three months before the date of the giving of the notice. In June, 1956, the defendants served a counter-notice under s. 24 (1) of the Act.

GORMAN, J., said that it was contended on behalf of the defendants that there never was at any time the position in law that Mrs. Bunting was the person with whom a contract of tenancy was made; that she was the administratrix of her husband and though she qualified as a tenant within the meaning of s. 94 (1) of the Act, she was not the tenant within s. 24 (2) (*g*). It was contended that the words "with whom the contract of tenancy was made" had a limiting effect on the word "tenant" in s. 24 (2) (*g*). Here it was not the tenant who died. If it had been, then one might have looked to s. 94 to see who was the tenant, and then one would have found it was the holder of land under a contract of tenancy, and included executors, administrators, and so on. But it was said that the only person who came within the scope of s. 24 (2) (*g*) was the tenant with whom the contract of tenancy was made. That contention was right. Under s. 24 (2) (*g*) the Legislature only contemplated the original tenant who had actually been in contractual relationship with the landowner. The effect of that construction was that one was unable to get rid, without the consent of the Minister, of a tenant other than the tenant having a direct contract with the owner of the land. The words "with whom the contract of tenancy was made" had a limiting effect upon the word "tenant." Therefore the notice was bad, because Mrs. Bunting did not come within the scope of s. 24 (2) (*g*).

APPEARANCES: *Michael Havers* (*Metcalfe, Copeman & Pettefar*); *Claud Allen* (*Sadler, Lemmon & Gethin*, King's Lynn).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 580

TOWN AND COUNTRY PLANNING: PLANNING PERMISSION: OUTLINE PERMISSION: SUBJECT TO APPROVAL OF "MATTERS RESERVED": DETAILS OF RESERVED MATTERS SUBMITTED: WHETHER FRESH APPLICATION

Hamilton and Another *v.* West Sussex County Council and Another

Donovan, J. 28th March, 1958

Action.

On 12th February, 1955, the owners of a farm, Court Farm, applied to the local planning authority for development permission in respect of, *inter alia*, the erection of a replacement cottage. In the application, which was made on the prescribed printed form, the answer to a question asking for the address or location of the land to be developed was given as "Court Farm . . ." and the area of land to which the application related was stated to be "a part of approximately 40 acres." The application was accompanied by a plan showing the proposed layout of the farm, including features not the subject of the application, and on it an outline of a cottage with a path leading to it from a private road across the farm was marked "New replacement cottage here." On 27th April, 1955, the planning authority gave an outline permission under reg. 5 (2) of the Town and Country Planning General Development Order, 1950, subject, *inter alia*, to the following conditions: "(*c*) any departure from the approved proposals being made the subject of a fresh application" and "(1) . . . approval . . . is required in respect of matters reserved in this permission before any development is commenced; (2) the permission shall become null and void unless satisfactory plans and elevations giving details of the design and siting of the building are submitted to and approved by the local planning authority within two years . . ." On 17th October, 1956, the landowner submitted to the planning authority a further application, stated to relate to "3·21 acres," for permission to erect a cottage and garage in accordance with specifications, plans and elevations attached to the application; those plans showed the new cottage on a site about 400 yards away from the site shown on the plan accompanying the first application and with a curved gravel path leading to the farm road. On 19th November, 1956, the planning authority refused that application, stating the following reasons for the refusal: "The development is contrary to the planning proposals for the area in that (*a*) the land is not allocated for residential development and (*b*) the proposal conflicts with the local planning authority's intentions regarding residential development as set out in the written statement accompanying the development plan." In an action by the landowner alleging that, since the refusal made no reference to the matters reserved in the outline permission, those matters must by inference be deemed to have been approved, she claimed a declaration that the outline permission of 27th April, 1955, was a good and valid permission within the meaning of the Town and Country Planning Act, 1947, which now entitled her to proceed with the erection of the cottage and garage in accordance with detailed plans submitted on 17th October, 1956. The planning authority alleged that the application of 17th October, 1956, was a fresh application which had been considered on its merits and refused.

DONOVAN, J., said that in all the circumstances it appeared to him quite clear that the land which had been the subject of the outline application in February, 1955, and the grant of the outline permission in April, 1955, included the whole of Court Farm, and not merely the land on which the replacement cottage had originally been sited. The defendants had raised a further point. They had said that on the plan submitted for outline permission a form of access from the proposed cottage to a road had been shown, whereas on the final plans a different form of such access had been shown. His lordship said that in his judgment reg. 5 (2) of the Town and Country Planning General Development Order, 1950, had no application to a private road; and that it was, accordingly, immaterial that the position of the private road was not the same in the 1956 application as it had been in the original application; that the 1956 application was not, accordingly, a new application; and that therefore the planning authority's reasons for refusing the 1956 application were wrong and could not be sustained. Finally his lordship said that since the planning authority had already considered the matters reserved in the outline permission, and had found nothing to which they wished to object, they were not entitled to consider the reserved matters a second time. In these circumstances his lordship granted the plaintiffs the declaration which they sought.

APPEARANCES: *L. A. Blundell* (*Kenneth Brown, Baker, Baker*); *Nigel Bridge* (*Lees & Co.*).

[Reported by DAVID CALCUTT, Esq., Barrister-at-Law] [2 W.L.R. 873

RATING: HOUSING TRUST: WHETHER CONDUCTED FOR PROFIT

Guinness Trust (London Fund) Founded 1890 Registered 1902 *v.* West Ham Borough Council

Lord Goddard, C.J., Hilbery and Donovan, JJ. 22nd April, 1958

Case stated by the Recorder of West Ham Quarter Sessions.

The trust deed of a housing trust showed that its main object was to provide proper dwelling accommodation for the poorer

classes of London. The trustees were required by expending the original capital of the trust fund on objects of a permanent character returning a fair low rate of interest to keep the fund intact and increase it so as to make more revenue available for the purposes of the trust. The trust claimed that a hereditament which it owned and occupied and a flat which it let to a tenant were entitled to rating relief under s. 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, as premises "occupied for the purposes of an organisation . . . which is not established or conducted for profit and whose main objects are charitable . . ."

LORD GODDARD, C.J., said that, assuming that the trust was not established for profit, in the sense that that was not the object of the trust, but was to be conducted for profit and existed in order that there might become an accumulation of funds which would enable the trustees to invest in other buildings and thus increase the benevolent objects the settlor had in mind, the rating authority was only concerned whether the conduct of the business was for profit, and it was. *National Deposit Friendly Society Trustees* v. *Skegness Urban District Council* [1957] 2 Q.B. 573 showed that if there was profit being made the rating authority was not concerned with what was done with that profit, and whether the profit was used for charitable purposes or for any other purpose. Although the main objects were charitable the trust was not entitled to the benefit of the section.

HILBERY, J., said that a fair interpretation of the trust deed was a direction to the trustees so to conduct the affairs of the trust as to produce a profit, which would, if possible, increase the fund available for the charitable purposes, and that was conducting for profit—true, for the purpose eventually of effecting the charitable purposes, but none the less they were directed to conduct for profit. That seemed to distinguish the case from the *National Deposit Friendly Society* case. If the facts were that the trustees had merely incidental to the discharge of the trust so to invest money as to increase the money available for charitable purposes, the case would come immediately within the reasoning of that judgment, but that was not the case here.

DONOVAN, J., delivered a judgment to the same effect. Appeal allowed. Leave to appeal.

APPEARANCES: *Michael Rowe*, Q.C., and *Geoffrey Rippon* (*G. E. Smith*, West Ham); *J. P. Widgery*, Q.C. (*Travers Smith, Braithwaite & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 541

SOLICITOR: DUTY TO INFORM CROWN OFFICE OF MATTERS AFFECTING CAUSES ENTERED IN THE CAUSE LIST

Williamson *v.* British Boxing Board of Control (1929) and Others

Devlin, J. 23rd April, 1958

Application.

In an action by the plaintiff against three defendants, the first two defendants were dismissed from the action on failure of the plaintiff to deliver particulars, and on 1st April, 1958, the third defendant obtained an order from Master Lawrence dismissing the action against him for want of prosecution. The case was set down to be heard by a jury and was in the list for hearing on 15th April. A jury had been summoned and were present in court. On being informed that the action had been discontinued, Devlin, J., ordered that the case should be put in the list again so that he might determine what order should be made.

DEVLIN, J., said that on 17th April, 1958, he had dealt with a case (*Kloss* v. *Curtis*, *The Times*, 18th and 19th April, 1958) where an order made by a master had taken the case out of this term's list; and in the present case the only remaining defendant in the action obtained an order by which the action against him was to be dismissed for want of prosecution. Each of those cases had remained in the list because the Crown Office had not been given the necessary information to enable it to take the case out of the list, and in each case the solicitors had blamed each other. The overriding rule in this matter was Ord. 36, r. 29 (6), which made it abundantly plain that it was the duty of both solicitors to take the necessary steps, and it was not open to either to say that the responsibility lay wholly on the other. The rule placed the duty fairly and squarely on both solicitors; and if the rule was not fulfilled solicitors laid themselves open to being made to pay personally the costs thrown away as a result of the waste of public time. His lordship was now investigating the particular case where the responsibility lay, and in this case he thought that it fell on the solicitors for the third defendant. It was they who obtained the order which dismissed the action for want of prosecution; and it was their duty to see that it was filed with the Crown Office so that the action could be removed from the list. Accordingly, his lordship ordered that the third defendant's solicitors should pay personally the costs thrown away in this matter, including the costs of bringing the jury to the court, the costs of the present application, and the costs of the proceedings before his lordship when the case came into the list. Order accordingly.

APPEARANCES: *Basil Garland* (*Lewis & Shaw*); *R. A. Gatehouse* (*Field, Roscoe & Co.*); *G. E. Janner* (*Barnett Janner & Davis*).

[Reported by Miss M. M. HILL, Barrister-at-Law] [1 W.L.R. 539

TOWN AND COUNTRY PLANNING: DEVELOPMENT: JUSTICES' JURISDICTION

Eastbourne Corporation *v.* Fortes Ice Cream Parlour (1955), Ltd.

Lord Goddard, C.J., Hilbery and Donovan, JJ.

30th April, 1958

Case stated by Eastbourne Justices.

In or about June, 1956, a company placed an automatic, coin-operated ice-cream sales machine on the forecourt outside its premises, which it used as an ice-cream parlour. There were holes in the base of the machine whereby it could be bolted to the ground when in use; the refrigeration plant in the machine was operated by electricity supplied through a cable. No planning permission was sought or obtained for the machine and by an enforcement notice dated 16th May, 1957, served by the local planning authority, the company was required to remove the machine. The company appealed to the justices against the notice under s. 23 (4) of the Town and Country Planning Act, 1947. The justices held that there had been no development within s. 12 (2) of the Act and quashed the notice. The local authority appealed.

LORD GODDARD, C.J. (dissenting), said that the effect of s. 17 (2) of the Act of 1947 was to enable the landowner to appeal to the Minister against the determination of the planning authority and the proviso to that subsection enacted that where it was decided by the Minister that any operations or use would constitute development, his decision should not be final for the purposes of any appeal to the court under the provisions relating to the enforcement of planning control. Section 23 (4) did give an appeal against an enforcement order and envisaged the case where, notwithstanding the decision of the Minister, the landowner carried out that which he proposed and then received an enforcement order. Notwithstanding the Minister's decision, he was given an appeal to the court and in that case the first question the court would have to decide would be whether the proposed operations or use would constitute development. It might be also they could decide that although it was development, no permission would be required because the work would come within the proviso to subs. (2) of s. 12. It followed that where the court was hearing an appeal under s. 23 (4), it had jurisdiction to consider whether the operations or change of use was development or not. This opinion did conflict with *Keats* v. *London County Council* [1954] 1 W.L.R. 1357, but s. 17 was not called to the attention of the court in that case. The object of that section appeared to be to enable a landowner to obtain a decision without committing what might prove to be a criminal offence.

HILBERY, J., said that he was in agreement with the judgment of Donovan, J.

DONOVAN, J., said that the Act made certain elected authorities the persons who were to plan and control development. If local benches of magistrates, on whom none of these duties was placed, could override the planning authority on the question whether something was "development" or not, it was obvious that they could interfere with all development plans, and that a large measure of planning control (as distinct from enforcement) had been placed in their hands. Had this been Parliament's intention, it would not have been effected by a mere proviso in a section dealing with a different subject-matter. One would have expected provisions as clear and explicit as those by which the magistrates' jurisdiction as to enforcement was expressed

and limited in s. 23 (4). In his lordship's opinion, therefore, the decision in *Keats* v. *London County Council* was correct, although no argument on the proviso to s. 17 (2) was presented to the court. The ultimate result was: (1) The decision in *Keats* still bound the court. (2) Accordingly, in the present case the magistrates had no jurisdiction under s. 23 (4) to consider whether the alleged development had in fact occurred and to decide that it had not. (3) That the appeal must accordingly be allowed, there being no other question before the court. Appeal allowed. Leave to appeal.

APPEARANCES: *Peter Boydell* (*Sharpe, Pritchard & Co.*, for *F. H. Busby*, Eastbourne); *J. D. James* and *H. H. Sebag-Montefiore* (*Clifford Turner & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 886**

Probate, Divorce and Admiralty Division

ADMINISTRATION: GRANT PENDENTE LITE: POSSIBILITY OF MINORITY OR LIFE INTEREST: POWER TO APPOINT SOLE ADMINISTRATOR

In the Estate of Haslip, deceased

Karminski, J. 2nd April, 1958

Probate motion.

A testatrix executed a will and codicil appointing by the latter the plaintiff, a nephew, executor. The will, which was drawn by the testatrix herself, contained interlineations and deletions the effect of which required decision by the court in default of settlement between the parties. The will disclosed on its face the possibility of a life interest arising. The application was for the appointment of the plaintiff or some other fit and proper person to be administrator *pendente lite* of the real and personal estate of the testatrix under s. 163 of the Supreme Court of Judicature (Consolidation) Act, 1925. Counsel for the plaintiff said that although *In the Estate of Lindley, deceased* [1953] P. 203 was authority for the proposition that s. 163 of the Supreme Court of Judicature (Consolidation) Act, 1925, was not governed by the preceding s. 160 (1), it was felt that the attention of the court should be drawn to the statement in Tristram & Coote, Probate Practice (19th ed., p. 515) that, when acting under s. 163, the court must appoint two administrators.

KARMINSKI, J., said that in *In re White* [1928] P. 75 an application to grant letters of administration to a sole administratrix was refused but that decision was to be distinguished from the present application since it concerned an application under a different section of the Supreme Court of Judicature (Consolidation) Act, 1925. The section now invoked, namely s. 163, referred to "administrator" in the singular. Further an administrator *pendente lite* was clearly, by virtue of the statute, in an especial position since he was under the constant supervision of the court. It was obviously to the benefit of the estate not to be burdened with the possible expense of a second administrator and he had no hesitation in following the decision of Wallington, J., in *In the Estate of Lindley, deceased, supra*. Order accordingly.

APPEARANCES: *Douglas Lowe* (*Wilkinsons*); *James Comyn* (*Kimbers*).

[Reported by Miss ELAINE JONES, Barrister-at-Law] **[1 W.L.R. 583**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Corporation of the Sons of the Clergy Charities Scheme Confirmation Bill [H.C.] [2nd May.

Falmouth Docks Bill [H.L.] [6th May.

Insurance Companies Bill [H.L.] [7th May.

To consolidate the Assurance Companies Acts, 1909 to 1946, and the enactments amending those Acts with corrections and improvements made under the Consolidation of Enactments (Procedure) Act, 1949.

Litter Bill [H.C.] [2nd May.

Matrimonial Proceedings (Children) Bill [H.C.] [2nd May.

Reading Almshouse and Municipal Charities Scheme Confirmation Bill [H.C.] [2nd May.

Royal Institution of Great Britain Charity Scheme Confirmation Bill [H.C.] [2nd May.

Royal School for Deaf Children Margate Bill [H.C.] [8th May.

St. James's Dwellings Charity Scheme Confirmation Bill [H.C.] [2nd May.

Read Second Time:—

First Offenders Bill [H.C.] [8th May.

Holy Trinity Hounslow Bill [H.C.] [7th May.

House of Commons (Redistribution of Seats) Bill [H.C.] [6th May.

Land Powers (Defence) Bill [H.C.] [8th May.

Read Third Time:—

Horse Breeding Bill [H.L.] [8th May.

Land Drainage (Scotland) Bill [H.C.] [6th May.

Port of London (Superannuation) Bill [H.C.] [7th May.

Seaham Harbour Dock Bill [H.L.] [6th May.

University of Leicester Bill [H.C.] [8th May.

Waltham Holy Cross Urban District Council Bill [H.L.] [6th May.

In Committee:—

Maintenance Orders Bill [H.C.] [8th May.

B. QUESTIONS

LAW ON GAMBLING

LORD CHESHAM said that the cost to public funds of the recent unsuccessful case brought against Lady Osborne and Mr. John Aspinall was £157. The decision to institute the proceedings was a matter for the police and was not within the responsibility of the Home Secretary in his capacity as police authority for the Metropolitan Police.

The question of the law relating to gaming and other forms of gambling had caused the Government anxious consideration. It was generally accepted that the present law on gaming was out of date, confusing and unsatisfactory. He could give no undertaking that legislation would be introduced at any particular time to give effect to the recommendations of the Royal Commission. [6th May.

WORK OF RESTRICTIVE PRACTICES COURT

The LORD CHANCELLOR stated that the Restrictive Practices Court had sat in open court for the first time on 22nd April. The judges of the court had for some months sat periodically in chambers for the determination of procedural questions. The court had fixed dates for the hearing of three cases during the Michaelmas Term, namely, cases concerning the agreements of the Chemists' Federation, the Cotton Yarn Spinners' Association and the Cotton Yarn Doublers' Association. As these were the first cases to be brought before the court and were heavy and important cases, it had been necessary to examine a very large number of documents, and the accounts and costings of dozens of firms, and to have these available for the court. These first cases would probably take as much as three weeks each. It was not, therefore, surprising that they had taken nearly eighteen months to get ready for hearing when one compared that with the time needed for preparing a normally heavy commercial case.

He understood that, in pursuance of directions given by the Board of Trade during the last thirteen months to the Registrar of Restrictive Trading Agreements about the order in which agreements were to be referred to the court, the Registrar had notified the parties to over seventy agreements that he proposed to refer them to the court. Notices of reference had been issued in forty-six cases. Of the seventy agreements which he had mentioned, twenty-three, i.e., 33 per cent., had been abandoned,

either by determination or by removal of all the restrictive provisions, and the Registrar had been informed that the parties to certain other agreements were taking steps to abandon them. [7th May.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time:—

Costs of Leases Bill [H.C.] [6th May.
To make provision for the incidence of the costs of leases.

Read Second Time:—

Blackpool Corporation Bill [H.L.] [5th May.
London County Council (General Powers) Bill [H.L.] [5th May.
Trading Representations (Disabled Persons) Bill [H.C.] [9th May.

Read Third Time:—

Brazilian Traction Subsidiaries Bill [H.L.] [7th May.

B. Questions

Vehicle-Towing Ambulances

Asked what steps he proposed to take to regularise the position arising from a decision of the Lord Chief Justice in the Divisional Court against a decision of the Appeal Committee of Dorset Quarter Sessions rejecting an appeal against a conviction for using a heavy-duty ambulance for cars, which did not comply with the Motor Vehicles (Construction and Use) Regulations, 1955, made under the Road Traffic Act, 1930, Mr. Nugent said that the Government were studying the implications of this judgment but were not yet in a position to make a statement. They regarded the matter as urgent and would be as quick as possible in arriving at a decision. [7th May.

Tenants (Sale of Leases)

Asked what steps he was going to take to prevent tenants of flats or houses for which no premium had been charged by the landlord from selling their leases for high premiums over the head of the landlord, Mr. H. Brooke said that where it was an offence to require a premium for the grant of a tenancy, it was also an offence to require a premium for its assignment. [7th May.

STATUTORY INSTRUMENTS

Brighton and Hove (Outfall Sewers) Order, 1958. (S.I. 1958 No. 720.) 5d.
Labelling of Food (Amendment) Regulations, 1958. (S.I. 1958 No. 717.) 5d.
Labelling of Food (Amendment) (Scotland) Regulations, 1958. (S.I. 1958 No. 719 (S. 32).) 4d.
Leeds-Halifax-Burnley-Blackburn-East of Preston Trunk Road (Portsmouth, Todmorden) Order, 1958. (S.I. 1958 No. 712.) 5d.
Newcastle and Gateshead Water Order, 1958. (S.I. 1958 No. 724.) 9d.
Orkney County Council (Loch of Boardhouse) Water Order, 1958. (S.I. 1958 No. 738 (S. 33).) 5d.
Safeguarding of Industries (Exemption) (No. 3) Order, 1958. (S.I. 1958 No. 734.) 5d.
Stalybridge and Dukinfield Joint Sewerage (Amendment) Order, 1958. (S.I. 1958 No. 743.) 5d.
Stopping up of Highways (County of Lancaster) (No. 13) Order, 1958. (S.I. 1958 No. 731.) 5d.
Stopping up of Highways (County of Lancaster) (No. 14) Order, 1958. (S.I. 1958 No. 732.) 5d.
Stopping up of Highways (London) (No. 16) Order, 1958. (S.I. 1958 No. 693.) 5d.
Stopping up of Highways (London) (No. 17) Order, 1958. (S.I. 1958 No. 694.) 5d.
Stopping up of Highways (London) (No. 18) Order, 1958. (S.I. 1958 No. 695.) 5d.
Stopping up of Highways (County of Salop) (No. 1) Order, 1958. (S.I. 1958 No. 733.) 5d.
Stopping up of Highways (County of Stafford) (No. 6) Order, 1958. (S.I. 1958 No. 710.) 5d.
Stopping up of Highways (County of York, West Riding) (No. 5) Order, 1958. (S.I. 1958 No. 715.) 5d.
Wages Regulation (Brush and Broom) Order, 1958. (S.I. 1958 No. 718.) 2s. 4d.
Wages Regulation (Fustian Cutting) Order, 1958. (S.I. 1958 No. 725.) 5d.
West Lothian Water Board Order, 1958. (S.I. 1958 No. 739 (S. 34).) 9d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Prices stated are inclusive of postage.]

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Enquiries of Local Authorities

Sir,—Your correspondent "Ignoramus," who, in his letter in your issue of 3rd May, complains about the clause in enquiries to local authorities which disclaims responsibility for the correctness of the replies, may be interested to learn that the Manchester Town Clerk raises no objection to enquiring solicitors deleting the clause. I understand that, out of the fees on such enquiries, he insures against any such risk falling on him. *O si sic omnes!*

S. Clayton Breakell.

Manchester, 2.

Charging Orders on Land in Joint Ownership

Sir,—In a recent article on "Charging Orders on Land" (p. 317, *ante*) your contributor suggested that where land is owned by a debtor jointly with another the judgment creditor will not be precluded from obtaining a charging order under s. 35 of the Administration of Justice Act, 1956, merely by reason of the fact that the debtor only has an interest in the proceeds of sale of the land in question. This view was based on the decision of the Court of Appeal in *Cooper* v. *Critchley* [1955] Ch. 431 that such an interest is an "interest in land" for the purposes of s. 40 of the Law of Property Act, 1925.

Readers of the article may be interested to know that this question was considered by a judge of the Queen's Bench Division in chambers in an unreported case decided on 28th October, 1957. In this case the debtor and his wife were tenants in common of land under a conveyance which contained an express trust for sale. The master made an order under s. 35 charging the debtor's interest, and the debtor appealed against this order to the judge. The appeal was argued by experienced counsel on both sides, the sole question in issue being whether the debtor's interest was an "interest in land" within s. 35 (1).

The judge held that it was not, basing his decision on *Thomas* v. *Cross* (1865), 2 Dr. & Sm. 423, and *Stevens* v. *Hutchinson* [1953] Ch. 299, and added that he was fortified in that view by the references in s. 35 (3) to the Land Charges Act, 1925, and the Land Registration Act, 1925, and the fact that the Legislature regarded the orders made under s. 35 as registrable under those Acts. The order charging the proceeds of sale was very different. *Cooper* v. *Critchley* was dealing with s. 40 of the Law of Property Act, 1925, which must be looked at in its context and history.

It seems that the judgment creditor's proper remedy in such a case may be the appointment of a receiver of the debtor's share in the proceeds of sale of the property.

E. G. Nugee.

London, W.C.2.

Crime and Punishment (Advance Bookings)

Sir,—I recently noted an interesting and somewhat extreme twist to the favourite howler: "Trespassers will be prosecuted."

On a new Wimbledon housing estate the following notice was prominently displayed: "The Police have been ordered to take into custody anyone guilty of trespass."

Ralph P. Ray.

London, S.W.19.

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to appoint John Melville Kennan, Esquire, to be a Judge of County Courts.

His Honour Judge Rhodes is retiring after sixteen years' service on the County Court Bench and His Honour Judge Archibald has resigned on grounds of ill-health.

The Lord Chancellor, with the consent of the Chancellor of the Duchy of Lancaster, has arranged for His Honour Judge Batt to succeed Judge Rhodes as the Judge of the Manchester and Leigh County Courts. His Honour Judge Steel succeeds Judge Batt as the Judge of the Stockport and Oldham group of courts and His Honour Judge Kennan succeeds to the vacancy on the Yorkshire Circuit which includes the Bradford and Huddersfield County Courts.

Personal Notes

Halesowen Town Council have decided to confer the Freedom of the borough upon Mr. Alfred Basterfield, the Town Clerk, who is to retire this year after forty-six years' service to the town.

Mr. C. O. Langley, solicitor and borough coroner of Wolverhampton, was presented on 9th May with a gold lapel badge by the Brewood branch of the British Legion, the highest award that can be given to a legion member by a branch.

Mr. John W. Wheeldon, deputy official receiver to the Board of Trade, is retiring after thirty-two years' service.

Miscellaneous

The Lord Chancellor was represented by Mr. Henry Salt, Q.C., at the Memorial Service for Mr. James Mould, a Bencher of Gray's Inn, which was held on Thursday, 8th May, by kind permission of the Treasurers and Masters of the Bench of the Inner Temple and Middle Temple, in the Temple Church.

The winning companies in 1958 of the *Accountant* annual awards for reports and accounts of public companies are the Peninsular and Oriental Steam Navigation Co. and John Dale, Ltd. The awards will be presented by Sir John Braithwaite, the Chairman of the Council of the Stock Exchange, in June, in the Hall of the Worshipful Company of Grocers.

OBITUARY

Mr. J. T. C. GITTINS

Mr. John Thorne Christopher Gittins, retired solicitor, of Newtown, Mont., died at Worthing on 29th April, aged 85. He was for forty-seven years clerk of Newtown and Llanidloes Rural Council and was District Coroner for the same period. He was admitted in 1894.

Mr. W. H. HIRD

Mr. William Herbert Hird, clerk to Messrs. Wright & Wright, solicitors, of Keighley, Yorks, for sixty years until his retirement, died on 3rd May, aged 78.

Mr. A. C. KNIGHT

Mr. Athro Charles Knight, J.P., solicitor, Under-Sheriff for the City of London, 1919–21 and 1924–25, died on 10th May, aged 79. He had been a member of the City Corporation since 1916, and was a Deputy of the Ward of Cheap, clerk and solicitor to the Worshipful Companies of Barber Surgeons and Gold and Silver Wyre Drawers, Commissioner in England for Australasia, India, Canada and Africa, Master of the Worshipful Company of Fletchers, 1933–34, of the Scrivener's Company, 1943–44, of the Tallow Chandlers' Company, 1947, of the Barber Surgeons Company, 1949–50, and one of H.M. Lieutenants of the City of London. He was admitted in 1902.

Mr. D. B. MORRIS

Mr. David Brinley Morris, retired solicitor, of Burry Port, Carmarthen, died on 5th April. He was admitted in 1924.

Mr. F. J. WELD

Mr. Francis Joseph Weld, solicitor, of Liverpool, died at Southport on 30th April, aged 84. He was Under-Sheriff of Cheshire for 1920–21 and 1923–24, president of Liverpool Law Society for 1925–26 and High Sheriff of Lancashire for 1942–43. He was admitted in 1897.

CASES REPORTED IN VOL. 102

22nd March to 17th May, 1958

For cases reported up to and including 15th March, see *ante*, p. 200

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £4 10s., Overseas £5 (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).